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EXAMINER

FLEISCHER, MARK A

ART UNIT

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3623

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

| | | | |
|------------------------------|--------------------------------------|--|--|
| Office Action Summary | Application No. 10/799,228 | Applicant(s) KAYE, EVAN JOHN | |
| | Examiner MARK A. FLEISCHER | Art Unit 3623 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Status of Claims

1. This action is in reply to the Application filed on 12 March 2004.
2. Claims 1–7 are currently pending and have been examined.

Priority

3. Applicant's claim for the benefit of a prior-filed application under 35 U.S.C. 119(e) or under 35 U.S.C. 120, 121, or 365(c) is acknowledged.

Claim Objections

4. Claim 4 is objected to because of the following informalities: The claim appears to be incomplete and missing words in addition to grammatical errors. Appropriate correction is required.

Claim Rejections - 35 USC § 112

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
6. Claim 4 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claim is incomplete and incomprehensible based on what appears to be grammatical errors. For purposes of examination, Examiner interprets the claim to involve the phrase ...*a caller requesting to speak with a participant associated with said topic.*

Claim Rejections - 35 USC § 101

7. 35 U.S.C. §101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

8. Claims 1–7 are rejected under 35 U.S.C. §101 because the claimed invention is directed to non-statutory subject matter. Based on Supreme Court precedent, and recent Federal Circuit decisions, the Office's guidance to examiners is that a §101 process must (1) be tied to another statutory class (such as a particular apparatus) or (2) transform underlying subject matter (such as an article or materials) to a different state or thing. *Diamond v. Diehr*, 450 U.S. 175, 184 (1981); *Parker v. Flook*, 437 U.S. 584, 588 n.9 (1978); *Gottschalk v. Benson*, 409 U.S. 63, 70 (1972); *Cochrane v. Deener*, 94 U.S. 780,787-88 (1876). An example of a method claim that would not qualify as a statutory process would be a claim that recited purely mental steps. Thus, to qualify as a §101 statutory process, the claim should positively recite the other statutory class (the thing or product) to which it is tied, for example by identifying the apparatus that accomplishes the method steps, or positively recite the subject matter that is being transformed, for example by identifying the material that is being changed to a different state. Examiner notes that many of the limitations in these claims appear to constitute method steps which, when tied to another statutory category as stated above, could render them to be within the statutory framework.

Claim Rejections - 35 USC § 102

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. §102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

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10. Claims 1–5 are rejected under 35 U.S.C. §102(a) as being anticipated by Wooten, *et al.* (US PgPub 20030088479 A1).

Claim 1:

Wooten teaches the following limitations as shown.

A method for scheduling call consultations (Wooten, abstract, see also [0053]: “In this example, an on-line scheduling consultation is conducted between a pharmaceutical sales representative and a physician.” (emphasis added)), *comprising*:

- *receiving an electronic request* (Wooten, [0054]: “...entering and submitting a consultation request into the physician’s electronic calendar.” (emphasis added) where ‘electronic ...’ in conjunction with ‘request’ corresponds to *receiving an electronic request*. Note that in ‘entering and submitting’ some entity is also *receiving*) *from a first participant for one or more on call dates* (Wooten, abstract: “Online scheduling systems comprise a scheduling module having an electronic calendar showing a plurality of time slots.” (emphasis added) and from [0053] above, either the pharmaceutical sales representative or physician corresponds to *a first participant* and ‘time slots’ corresponds to *on call dates*.);
- *assigning one or more on call dates to said participant* (Wooten [0025]: “Booked time slots [] are those that the buyer has indicated as being available and that a seller has selected for scheduling a consultation. [...] Confirmed time slots [] are those that the seller has confirmed his/her presence at a consultation’s scheduled date and time.” (emphasis added)); *and*
- *notifying potential callers of said first participant’s on call dates* (Wooten [0036]: “[...] the online scheduling system [] further comprises a notification module [...] in communication with the scheduling module [...] configured to notify buyers [] and sellers [...] of a scheduled consultation [].” (emphasis added)) *and qualifications* (Wooten [0045]: “In addition, a buyer may also have the ability to add exclusion data to the buver’s file. Exclusion data is data that represents particular sellers or particular companies with whom the buyer will not meet, or, with whom the buyer will not meet with representatives of.” (emphasis added) where ‘exclusion data’ corresponds to

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qualifications since the 'buyer's' exclusion is based on attributes which corresponds to *qualifications*.).

Claim 2:

Wooten teaches the following limitations as shown.

- *receiving electronic feedback information from one or more callers who have called said first participant during said one or more assigned on call dates* (Wooten, abstract: "The feedback module has executable instructions configured to receive feedback data from a buyer interface following a scheduled consultation." (emphasis added) where 'receive ...' corresponds to *receiving electronic feedback information*, 'buyer' corresponds to *one or more callers*, 'scheduled consultation' corresponds to *during said one or more assigned on call dates*. Note that given a 'consultation' there is also implied the *first participant*.); and
- *recording said feedback information in an electronic database* (Wooten, [0040]).

Claim 3:

Wooten teaches the following limitations as shown.

- *assigning said participant to a group associated with a topic* ([0003]: "Sales representatives ... a particular type of drug." (emphasis added) where 'particular...' corresponds to a *group[ing]* of sales representatives, hence *assigning said participant to a group associated with a topic*), and *wherein a potential caller does not have access to contact information for said participant unless said potential caller has indicated an interest in said topic* (Wooten [0004]: "To attract the interests of physicians, pharmaceutical sales representatives often provide nominal perks such as dinner or other paraphernalia in exchange for a brief meeting with the physician. However, due to their busy schedules, physicians typically do not want to meet with sales representatives they are unfamiliar with, or representatives soliciting products of no interest." (emphasis added) where reference to 'interest' corresponds to *has indicated an interest*. Wooten [0053]: "The physician establishes an account and/or profile with the operator of the host network by providing information [...] After establishing an account, the physician is granted access to various portions of the system to modify and/or enter data as needed." (emphasis added) and in [0043], "Other

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relevant information [...] It should be recognized that any combination of data could be entered into the system []. The purpose is simply to identify which buyers are participating." (emphasis added) where the 'relevant information' corresponds to *indicated an interest in said topic*. In [0020]: "In particular, a buyer [], such as a physician, could access the system ..." See also [0041] regarding "exclusion data and any other relevant information.").

Claim 4:

Wooten teaches the following limitations as shown.

- *said interest is indicated by said potential caller requesting to speak with a associated with said topic* (Wooten [0006]: "The feedback module comprises executable instructions configured to receive feedback data from a buyer interface following a scheduled consultation." (emphasis added) where 'feedback data' "could comprise any type of information that is relevant to the seller/buyer consultation" ([0050]) and 'scheduled consultation' corresponds to an episode where one party *speak[s]* to another.).

Claim 5:

Wooten teaches the following limitations as shown.

- *said interest is indicated by said potential caller attending one or more events associated with said topic* (Wooten [0005]: "Finally, it would also be advantageous to provide a system that collected data relating to the consultation between the physician and the sales representative. The data could be used by the sales representative to improve the sales presentation, or by the pharmaceutical companies to determine which sales representatives have superior selling approaches, or for any other variety of uses." (emphasis added) where 'collected data...' corresponds to *interest is indicated*, and 'sales presentation' corresponds to *one or more events* which *ipso facto* indicates an *attend[ance]* to such event. This information relates to *feedback* information cited above.).

Claim Rejections - 35 USC § 103

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wooten, *et al.* (US PgPub 20030088479 A1) in view of Maes, *et al.* (US PgPub 20020002502 A1).

Claim 6:

Wooten does not specifically teach the following limitations, but Maes, in an analogous art, does as shown.

- *said interest is indicated by said potential caller downloading one or more publications related to said topic* (Maes [0079]: "In another embodiment, the behavior of the user interface allows a user interested in learning about the underlying product space to do so by explicitly requesting more information by, for example, clicking on the product with the right mouse button. Thus, the user can quickly scan through a space visually [...]" (emphasis added) where 'interested in ...' corresponds to *interest is indicated* and 'clicking on the product' as through a web-browser (e.g., [0075]) which corresponds to *downloading one or more publications...* Although Maes does not use the term 'downloading', Examiner takes **Official Notice** that it is old and well-known as well as common place in the internet-related arts that clicking on a link in a web-browser causes a file to be downloaded and displayed, hence corresponds to a *publication*.).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made use the known techniques of Maes to further develop feedback information for use as in Wooten because such feedback information is useful in helping create better marketing (Wooten [0050]) and the benefits of using such information would have been predictable.

13. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wooten, *et al.* (US PgPub 20030088479 A1) as applied to Claim 2 in view of Katz (US 6148065).

Claim 7:

Wooten teaches the following limitations as shown.

- *transmitting an electronic invitation to said participant to request an on call date ...*(Wooten [0054]: “The sales representative locates a physician and schedules a consultation by entering and submitting a consultation request into the physician's electronic calendar.” (emphasis added) where ‘request’ corresponds to *an electronic invitation* and ‘electronic calendar’ corresponds to *request an on call date* that is in electronic form.).
- *and wherein said participant has received positive feedback for one or more calls related to said topic* (Wooten [0035]: “...configured to receive feedback data in the form of answers to a plurality of questions transmitted to the buyer [].” (emphasis added) where ‘receive feedback...’ corresponds to *participant has received positive feedback* and ‘plurality of questions’ corresponds to *a topic*.)

Wooten does not specifically teach that the *electronic invitation* pertain to a given *topic* or that there is an *association* between a *participant* and a *topic* based on a *predetermined number of callers [that] have expressed interest in said topic and wherein said participant has received positive feedback for one or more calls related to said topic*, but Katz, in an analogous art, does as shown.

- *associating said participant with a topic, wherein a predetermined number of callers have expressed interest in said topic*, (Katz [1,61]: “...statistically analyze acquired data, as in combination and in association with external data (time independent), and accordingly to isolate a subset of the callers with verifiable identification.” (emphasis added) and in Katz [20, 13]: “For example, the commentator may be statistically informed as to the numbers of callers holding specific views.” (emphasis added) where ‘holding specific views’ corresponds to *a topic*. See also [12,62]: “...excess of a predetermined number of calls...” where such threshold values provide

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useful statistical information and where there is thus an association between callers and topics as indicated by 'statistical analysis'.)

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made use the known techniques of telephonic statistical analysis of Katz to further develop useful feedback information for use as in Wooten because such feedback information is useful in helping create better marketing (Wooten [0050]) and the benefits of using such information would have been predictable.

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Conclusion

Any inquiry of a general nature or relating to the status of this application or concerning this communication or earlier communications from the Examiner should be directed to **Dr. Mark A. Fleischer** whose telephone number is **571.270.3925**. The Examiner can normally be reached on Monday-Friday, 9:30am-5:00pm. If attempts to reach the examiner by telephone are unsuccessful, the Examiner's supervisor, **Beth Boswell** whose telephone number is **571.272.6737** may be contacted.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://portal.uspto.gov/external/portal/pair> <<http://pair-direct.uspto.gov>>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at **866.217.9197** (toll-free).

Any response to this action should be mailed to:

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or faxed to **571-273-8300**.

Hand delivered responses should be brought to the **United States Patent and Trademark Office Customer Service Window**:

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Mark A. Fleischer, Ph.D.

/Mark A Fleischer/

Examiner, Art Unit 3623

29 July 2008

/Beth V. Boswell/

Supervisory Patent Examiner, Art Unit 3623